IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2007

CORAM:

THE HONOURABLE MR. JUSTICE S. MANIKUMAR

W.P.No.42086 of 2002

The Secretary to Government,
State of Tamil Nadu,
Environment and Forests Department,
Fort St. George, Chennai-9. ... Petitioner

Versus

1. N.Venkatesh

2.The Principal District and
Sessions Judge, Coimbatore. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari, to call for the records in Crl.A.No.239 of 2002, dated 14.08.2002 on the file of the second respondent and quash the same.
For Petitioner : Mr. K.Rajasekar,
Government Advocate

For 1st Respondent : Mr. S.Kamadevan

O R D E R
State is the petitioner herein. The judgment in C.A.No.239 of 2002, dated 14.08.2002 passed by the second respondent, setting aside the confiscation of the vehicle involved in a forest offence is under challenge.
2. Brief facts leading to the Writ Petition are as follows:
The first respondent is the owner of a TATA SUMO bearing Registration No.TN-27-W-0343. On 21.02.2002, the vehicle was seized by the Forest Officials for having transported 47 kgs of Sandalwood in Analamalai Reserved Forests, Amaravathy Range. Since there was no valid licence or permit to transport sandalwood, being a Schedule Timber as per the Tamil Nadu Forest Act, 1882 (hereinafter it is referred to as "the Act"), the vehicle along with the sandalwood were seized by the Forest Officials and a case was registered in STOR.No.4 of 2002 under Section 36-A of the Tamil Nadu Forest Act, 1882, Rule 3 of the Tamil Nadu Sandalwood Transit Rules, 1967 and Rule 3(1) of the Tamil Nadu Sandalwood Possession Rules, 1970. When the vehicle was intercepted by the Forest Officials, all the accused persons escaped from the scene of occurrence. The driver, Mr.Shanmugam surrendered before the Forest Ranger on the next day and confessed that one Mr.Sivalingam of Salem had engaged the vehicle on hire and he agreed for transportation of sandalwood for more money. The vehicle and seized materials were produced before the Authorised Officer for further action as contemplated under the Act.

3. The petitioner has further submitted that as sandalwood is a forest produce, it attracts the provisions of the Tamil Nadu Forest Act and as per Section 41 of the Act, the Forest Officer is

entitled to seize the forest produce, if it is transported illegally. Thereafter, Authorised Officer has issued a show cause notice under Section 49(b)(2) of the Act, on 18.04.2002, to the first respondent, who is the owner of the vehicle as well as Shanmugam from whom the vehicle was seized. Both of them received the show cause notice and the first respondent, Mr.Venkatesh, owner of the vehicle, appeared before the authorised officer and stated that the vehicle was given to his driver, Mr.Shanmugam for private use and that some smugglers have involved him in the transport of sandalwood and that the owner was not involved in the offence. The driver of the vehicle also appeared and stated that the offence had occurred without the knowledge of his owner. The first respondent has filed his objections on 08.05.2002 for the confiscation proceedings initiated by the Authorised Officer.

4. The petitioner has further submitted that as per Section 49(B)(2) of the Act, it is the bounden duty of the owner to prove to the satisfaction of the Authorised Officer that the vehicle was used in the commission of the offence without his knowledge or connivance, his agent if any and the person, who is in charge of the vehicle and that each of them had taken all reasonable and necessary precautions against such use. Therefore, the petitioner has submitted that it is not enough, if the owner merely pleads innocence of the offence, but he has to substantiate his claim with tangible evidence. Placing reliance on a decision in W.A.No.1296 of 1995, dated 04.12.1995, the petitioner has submitted that the burden is on the owner to prove that the vehicle is not involved in the offence and, that, he cannot escape from the liability, by merely saying that he is not involved in the offence and has no knowledge about the same.

5. It is further submitted that on the basis of the admission of the driver and considering other relevant materials, the Authorised Officer prima facie satisfied that a forest offence had been committed in respect of the vehicle with the connivance of the driver of the vehicle, from whose custody the vehicle was seized. Since the driver had failed to take all reasonable and necessary precautions against the illegal transport of sandalwood, the Authorised Officer has rightly passed the order of confiscation under Section 49A of the Act.

6. Aggrieved by the order of confiscation, the first respondent, who is the registered owner of the vehicle filed an appeal under Section 49(D) of the Act and considering the facts and circumstances, the Learned Principal District and Sessions Judge, Coimbatore, the second respondent herein, allowed the appeal and set aside the order of confiscation and directed release of the vehicle. Challenging the order of the learned Principal District and Sessions Judge, Coimbatore, the petitioner has filed the present Writ Petition for the relief as stated above.

7. The first respondent in his counter affidavit has denied the various averments made in the Writ Petition and further submitted that he had purchased a TATA SUMO van on 09.01.2002 from one Venkatalakshmi for Rs.2,00,000/-. He obtained a loan of Rs.1,00,000/- from one Dhanalakshmi for the purchase of the above vehicle. The first respondent has further submitted that on 18.08.2002, one Shanmugam, his neighbour, had taken his vehicle to attend a marriage of his relative. On information that the said Shanmugam had used his vehicle for illicit transportation of sandalwood and ran away from the scene of occurrence, when it was seized by the forest officials, the respondent himself produced the said Shanmugam before the Authorised Officer on the next day, i.e., on 22.02.2002. He has further submitted that he has no knowledge or connivance in the commission of offence of transport of sandalwood.

8. The first respondent has further submitted that a criminal case was registered against the said Shanmugam for transporting sandalwood illegally, whereas, the petitioner was not made as an accused. During the enquiry before the Forest Officer, the first respondent has given a statement to the effect that the occurrence had taken place at Annamalai Reserved Forests, Amaravathy Range,

without his knowledge or connivance. According to him, the confiscation ordered by the Authorised Officer has rightly been interfered with by the learned Principal District and Sessions Judge and the same does not warrant interference. It is his further case that the petitioner cannot be termed as an aggrieved person to challenge the order of the second respondent, inasmuch as there is no rival claim and the petitioner is not the owner of the vehicle. For all these reasons, the Writ Petition filed is not maintainable in law.

9. Mr.Rajasekar, learned Government Advocate appearing for the petitioner submitted that sandalwood is a schedule timber and as per Section 49-A of the Tamil Nadu Forest Act, 1882, if an offence in respect of any schedule timber is believed to have been committed, the officer seizing the property, used in the commission of offence, such as tools, ropes, vehicles, chains, etc., shall produce the same before the Authorised Officer, who is empowered to order confiscation of the vehicle, after giving notice to the person from whom it is seized, notwithstanding, prosecution is instituted or not for the commission of such forest offence. He further submitted that as per Section 49-B of the Act, if the owner of the tool, rope, vehicle, chain etc., proves to the satisfaction of the Authorised Officer that it was used in carrying sandalwood, without his knowledge or connivance of himself, his agent if any, and the person in charge of the tool, rope chain, boat, vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use, then he is entitled to release of the vehicle.

10. Learned counsel for the petitioner further submitted that when the owner had appeared before the Authorised Officer and gave a statement that his driver was responsible for the offence, then the fact that the driver had not taken all reasonable and necessary precautions against the use of such vehicle in the commission of offence is proved beyond reasonable doubt and therefore, learned Principal District Judge has erred in not properly interpreting Section 49-B(2), which imposes a stringent condition on the part of the owner to discharge his burden that the timber was carried without his knowledge or connivance and that all the three persons, viz., the owner, his agent, if any, person in charge of the vehicle, had taken all reasonable and necessary precautions against such use.

11. Learned counsel for petitioner further submitted that when the owner himself had admitted the involvement of his vehicle in the commission of offence, the learned Judge has erred in releasing the vehicle on the ground that the offence was committed without the knowledge of the owner. He further submitted that the provisions relating to confiscation under the Forest Act is a deterrent provision to curtail smuggling activities and the appellate authority has failed to consider the same in proper perspective.

12. Mr.Kamadevan, learned counsel appearing for the first respondent, referring to Section 49B(2) of the Act, strenuously contended that once the owner proves to the satisfaction of the authority under the Act that the vehicle was used in carrying timber without his knowledge or connivance, then he is entitled to the release of the vehicle. He further submitted that the moment, the owner came to know that his neighbour, had used his vehicle for transporting sandalwood, he had voluntarily produced the offender before the Forest Officials and that, on investigation, a criminal case was registered only against his neighbour and another person involved in the commission of offence. He further submitted that as the conduct of the owner is bona fide in assisting the prosecution and considering the fact that he was not implicated as an accused in the criminal case, the finding of the learned Principal District Judge that the owner was not aware of the involvement of the vehicle and was entitled to release of the vehicle, cannot be termed as perverse, warranting interference. Lastly, he submitted that the petitioner is not an aggrieved person and therefore, the Writ Petition is not maintainable.

13. Before dealing with the facts of the case on hand, I would like to extract the views of the Supreme Court and this Court as to how the Courts/Forest Officials have to deal with the matter relating to the release of the vehicle seized for committing the forest offence. Though the first judgment relates to a case of release of the vehicle before culminating into the confiscation proceedings, the principles stated in the judgment would be relevant for the purpose of adjudication of the case on hand.

14. In State of Karnataka v. K.Krishnan reported in AIR 2000 SC 2729, while dealing with a release of vehicle involved in the Forest case, the Supreme Court in Para 7, held as follows:
"The provisions of the Act are required to be strictly complied with and followed for the purposes of achieving the object for which the Act was enacted. Liberal approach in the matter with respect to the property seized, which is liable to confiscation, is uncalled for as the same is likely to frustrate the provisions of the Act. Before passing an order for releasing the forest produce or the property used in the commission of the forest offence, the Authorised Officer or the Appellate Authority has to specify the reasons which justify such release, apparently, prima facie excluding the possibility of such forest produce or the property being confiscated ultimately. Generally, therefore, any forest produce and the tools, boats, vehicles, cattles etc., used in the commission of the forest offence, which are liable to forfeiture, should not be released. This however, does not debar the officers and the authorities under the Act including the Appellate Authority to pass appropriate orders under the circumstances of each case but only after assigning valid reasons. The liberal approach in the matter would perpetuate the commission of more offences with respect to the forest and its produce which, if not protected, is surely to affect the mother-earth and the atmosphere surrounding it. The Courts cannot shut their eyes and ignore their obligations indicated in the Act enacted for the purposes of protecting and safeguarding both the forests and their produce. The forests are not only the natural wealth of the country but also protector of human life by providing a clean and unpolluted atmosphere. We are of the considered view that when any vehicle is seized on the allegation that it was used for committing a forest offence, the same shall not normally be returned to a party till the culmination of all the proceedings in respect of such offence, including confiscatory proceedings, if any. Nonetheless, if for any exceptional reasons a Court is inclined to release the vehicle during such pendency, furnishing a bank guarantee should be the minimum condition. No party shall be under the impression that the release of vehicle would be possible on easier terms, when such vehicle is alleged to have been involved in commission of a forest offence. Any such easy release would tempt the forest offenders to repeat commission of such offences. Its casualty will be the forests as the same cannot be replenished for years to come."

15. In yet another decision in Divisional Forest Officer v. G.V.Sudhakar Rao reported in AIR 1986 SC 328, the Supreme Court considered the scope and effect of Section 44(2A) of the Andra Pradesh Forest Act, when the High Court under Section 482 Cr.P.C., stayed the confiscation proceedings initiated under Section 44(2A) of the Forest Act. The Apex Court, while dealing with the power of the Forest Officer for confiscation of the vehicle, vis-a-vis, the Magistrate held that the confiscation of the vehicle carrying timber, goods forming the subject matter is not depended upon whether prosecution of the commission of Forest offence has been launched against the offender or not. At Para 3 to 5, the Supreme Court dealt with the above issue as follows:
"3.. The precise question that falls for determination is whether where a Forest Officer makes a report of seizure of any timber or forest produce and produces the seized property along with a report under Section 44(2) that he has reason to believe that a forest offence has been committed in respect of such timber or forest produce seized, can there simultaneously be proceedings for confiscation to Government of such timber or forest produce and the implements etc. by the Authorized Officer under Section 44(2A) of the Act if he is satisfied that a forest offence has been committed, along with a criminal case instituted on a complaint by the Forest Officer before a Magistrate of the commission of a forest offence under Section 20 of the Act. The appeal turns upon

a proper construction of Sections 44(2), 44(2A) and 45 of the Act, as amended by Act 17 of 1976.
4. In order to deal with the question involved, it is necessary to refer to the statutory changes brought about. The Act, prior to its amendment by Act 17 of 1976 provided by Section 44 insofar as material, as follows:
""44(1) Where there is reason to believe that a forest offence has been committed in respect of any timber or forest produce, such timber, or forest produce, together with all tools, ropes, chains, boats, vehicles and cattle used in committing, any such offence, may be seized by any forest officer or police officer.
(2) Every officer seizing any property under this Section shall place on such property, or the receptacle, if any, in which it is contained a mark indicating that the same has been so seized and shall, except where the offender agrees in writing forthwith to get the offence compounded, make a report of such seizure to the magistrate:
Provided that where the timber or forest produce with respect to which such offence is believed to have been committed is the property of the Central or State Government and the offender is not known, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to the Divisional Forest Officer.
(3) *** *** *** ***
(4) *** *** *** ***
(5) The property seized under this section, shall be kept in the custody of the forest officer not below the rank of a Forest Guard or the village headman until the compensation for compounding the offence is paid or until an order of the magistrate directing its disposal is received.
Section 45 of the Act, prior to its amendment, was in these terms:
45. Where a person is convicted of a forest offence, the court sentencing him shall order confiscation to the Government of timber or forest produce in respect of which such offence was committed and of any tool, boat, vehicle other than a cart drawn by animals, vessel or other conveyance or any other article used in committing such offence.""

After extracting the relevant provisions, the Apex Court dealt with the scope and nature of proceedings initiated for confiscation of the vehicle and criminal action taken against the offenders and held as follows:
"5. The change in the law was brought about with a view to prevent the growing menace of ruthless exploitation of Government forests by illicit felling of teak and other valuable forest produce by unscrupulous traders, particularly from the reserved forests by providing for a machinery for confiscation of illegally felled trees or forest produce by the Forest authorities. Under Section 45 of the Act as it then stood, where a person was convicted of a forest offence, the Court sentencing him was empowered to order confiscation to the Government of timber or forest produce in respect of which a forest offence was committed and of any tool, boat, vehicle other than a cart draw by animals, vessel or other conveyance or any other article used in committing such offence. Although there was a provision for seizure of such articles in Section 44 of the Act, there was no provision in the Act enabling the forest officers to confiscate such timber or forest produce and the implements etc. used for committing forest offences even in a case where he was satisfied that a forest offence had been committed. In view of this, the Forest Department was finding it difficult to curb the forest offences effectively and quickly inspite of the fact that large scale felling and smuggling of forest produce was on the increase. Hence it was thought necessary to empower the officials of the Forest Department seizing any property under Sub-section (1) of Section 44, instead of merely making a report of the seizure to a Magistrate, also to order confiscation of timber or forest produce seized together will all the tools, boats, vehicles etc. used in committing such offence. Statement of Objects and Reasons: The intendment of the Legislature in enacting Act 17 of 1976 was therefore to provide for two separate proceedings before two independent forums in the Act, one, for confiscation by a departmental authority exercising quasi-judicial powers conferred under Sub-section (2A) of Section 44 of the goods forming the subject-matter of the offence, and the other for the trial of the person

accused of the offence so committed. It brought about the following changes, namely, : (1) In Sub-section (2) of Section 44 of the Act in the opening paragraph, for the words "make a report of such seizure to the magistrate:", the following words and brackets were substituted, namely:
Without any unreasonable delay either produce the property seized before an officer not below the rank of an Assistant Conservator of Forests authorized by the Government in this behalf by notification (hereinafter referred to as the authorized officer) or make a report of such seizure to the magistrate:
(2) After Sub-section (2), Sub-Sections (2A), (2B), (2C), (2D) and (2E) were inserted. Sub-section (2A), which is material for our purposes, provides:
(2A) Where an authorized officer seizes under Sub-section (1) any timber or forest produce or where any such timber or forest produce is produced before him under Sub-section (2) and he is satisfied that a forest offence has been committed in respect thereof, he may order confiscation of the timber or forest produce so seized or produced together with all tools, ropes, chains, boats or vehicles used in committing such offence.
Sub-section (2B) enjoins that no order confiscating any property shall be made under Sub-section (2A) unless the person from whom the property is seized is given (a) a notice in writing informing him of the grounds on which it is proposed to confiscate such property; (b) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation; and (c) a reasonable opportunity of being heard in the matter. Sub-section (20) provides that without prejudice to the provisions in Sub-section (2B), no order of confiscation under Sub-section (2A) of any tool, rope, chain, boat or vehicle shall be made after the owner thereof proves to the satisfaction of the Authorized Officer that it was used in carrying the property without his knowledge or connivance, or the knowledge or connivance of his agent, if any, or the person in charge of the tool, rope, chain, boat or vehicle in committing the offence and that each of them had taken all reasonable and necessary precautions against such use. Sub-section (2D) confers power on an Authorized Officer not below the rank of a Conservator of Forests empowered by the Government in that behalf, may within 30 days of the date of the order of confiscation by the Authoirzed Officer under Sub-section (2A), either suo motu or on an application call for and examine the record of that order and may make such inquiry or cause such inquiry to be made and pass such orders as he may think fit. Proviso thereto enjoins that no order prejudicial to any person shall be passed without giving him an opportunity of being heard. Sub-section (2E) confers a right of appeal to the person aggrieved by an order passed under Sub-section (2A) or Sub-section (2D). Such an appeal had to be preferred within 30 days from the date of communication to him of such order, to the District Court having jurisdiction over the area in which the property had been seized. The District Court was conferred the power after giving an opportunity to the parties to be heard, to pass such order as it may think fit and the order of the District Court so passed shall be final."

16. In State of W.B. v. Sujit Kumar Rana reported in 2004 (4) SCC 129, the Supreme Court, while dealing with a similar provision for confiscation under the West Bengal Forest Act, at Paragraph 21, held as follows:
"The State Legislature of West Bengal has inserted the said provisions (relating to the seizure and confiscation) with a laudable object. Forest is a national wealth which is required to be preserved. In most of the cases, the State is the owner of the forests and forest produce. Depletion of forests would lead to ecological imbalance. It is now settled that the State is enjoined with a duty to preserve the forests so as to maintain ecological balance and, thus, with a view to achieve the said object forests must be given due protection. Statutes which provide for protection of forests to maintain ecological balance should receive liberal construction at the hands of superior Courts. Interpretive exercise of such power should be in consonance with the provisions of such statutes not only having regard to the principle of purposive construction so as to give effect to the aim and object of the legislature; keeping the principles contained in Articles 48-A and 51-A(g) of the Constitution of India in mind. The provisions for confiscation have been made as a deterrent object

so that felling of trees and deforestation is not made."

In the above reported case, confiscation proceedings were pending before the Forest Officer under the Forest Act. The High Court in exercise of its power under Section 482 Cr.P.C., released the vehicle involved in the Forest offence. The Supreme Court held that although the Criminal Court indisputably has a jurisdiction to deal with the property which is the subject matter of offence in terms of the provisions of the Code of Criminal Procedure, but once the confiscation proceedings are initiated, the said provision under Section 482 of the Criminal Procedure Code, cannot be exercised by the Magistrate. At Paragraph 34 and 43 of the judgment, the Supreme Court held as follows:
"An order of confiscation in respect of a property must be distinguished from an order of forfeiture thereof. Although the effect of both confiscation and forfeiture of a property may be the same, namely, that the property would vest in the State but the nature of such order having regard to the statutory scheme must be held to be different. A proceeding for confiscation can be initiated irrespective of the fact as to whether prosecution for commission of a forest offence has been lodged or not. A confiscation proceeding, therefore, is independent of a criminal proceeding. A confiscation envisages a civil liability whereas an order of forfeiture of the forest produce must be preceded by a judgment of conviction."

17. In yet another decision in State of Bihar v. Kedar Sao reported in 2004 (9) SCC 344, the Supreme Court observed that the provision of seizure and its procedure for confiscation as contained in Section 52 of the Indian Forest Act, as amended by Bihar Amendment Act 9 of 1990 were made having regard to the fact that not only the commission of forest offences are on the increase but rampant acts involving large-scale pilferage and depletion of forest wealth not only causing serious onslaught on the nature and environment causing ecological imbalance and irreparable loss and damage to public property, were taking place and the States, therefore, had to take such drastic legislative measures with a view to prevent commission of such offences.

18. The Division Bench of this Court in W.A.No.1296 of 1995, dated 04.12.1995, considered the extent of burden to be discharged by the persons mentioned in Section 49-B of the Tamil Nadu Forest Act, so as to enable the owner to get the release of the vehicle. After extracting Section 49-B of the Forest Act, this Court at Paragraph 5 of the judgment held as follows:
"5. In our view, the proviso to Section 49-B of the Act has not been properly and correctly applied to the facts and circumstances of the present case. Section 49-B of the Act reads as follows:
""49-B. Issue of show cause notice before confiscation under Section 49-A(1) No order confiscating any scheduled timber, or tools, ropes, chains, boats, vehicles or cattle shall be made under Section 49-A except after notice in writing to the person from whom it is seized informing him of the grounds on which it is proposed to confiscate it and considering his objections, if any:
Provided that no order confiscating a motor vehicle shall be made except after giving notice in writing to the registered owner thereof, if, in the opinion of the authorised officer, it is practicable to do so and considering his objections, if any.
Without prejudice to the provisions of sub-section (1), no order confiscating any tool, rope, chain, boat, vehicle or cattle shall be made under Section 49-A, if the owner of the tool, rope, chain, boat, vehicle or cattle proves to the satisfaction of the authorised officer that it was used in carrying scheduled timber without the knowledge or connivance of the owner himself, his agent, if any, on the person in charge of the tool, rope, chain, boat, vehicle or cattle and that each of them had takes all reasonable and necessary precautions against such use.""
The latter portion of the proviso places burden upon the owner of the vehicle. It is not enough for the owner of the vehicle to prove that the vehicle was used without his knowledge or connivance. He is also further required to prove that the agent or the driver under whose possession, the vehicle was being kept, had taken all reasonable and necessary precautions against such use. In the instant case, it is not in dispute that the vehicle was seized when it was transporting illegally sandalwood. In

such cases the aforesaid proviso comes into operation. The burden shifts on the owner of the vehicle to prove by convincing evidence that not only he had no knowledge of or had not connived with the use of the vehicle for illegal purpose, but his agent or the person in charge of the vehicle had taken all the reasonable and necessary precautions against such use. The owner has not adduced any evidence to show that the driver of the vehicle took necessary and reasonable precautions to prevent the use of the vehicle for illegally transporting the sandalwood. The fact that the driver was in the custody of the Police, did not in any way prevent the owner to examine him and to adduce any other evidence to prove that reasonable and necessary precautions were taken by the person in charge of the vehicle. The object of the proviso is to ensure that the owner of the vehicle does not escape by merely pointing out that he had no knowledge. He being the owner of the vehicle, it is his responsibility to ensure that not only he himself had taken care to see that the vehicle was not used for any unauthorised purpose, but also the person placed in charge of the vehicle did not use the vehicle, allowed it to be used or connived at use for such purpose. This provision of law requires to be scrupulously observed in order to prevent the smuggling of sandalwood. Therefore, we are of the view that the Prescribed Authority and the learned Single Judge have not taken into consideration the true and correct scope and ambit of the proviso to Section 49-B of the Act. That being so, the order of the Prescribed Authority cannot be sustained. Consequently, the order of the single Judge has to be set aside."

19. Following the decision rendered in W.A.No.1296 of 1995, dated 14.12.1995, another Division Bench of this Court in The State of Tamil Nadu v. A.K.Raju reported in 2005 (1) MLJ 448, has compared the extent of burden to be discharged by the owner of the vehicle under Section 52 of the Indian Forest Act and Sections 49-A and 49-B of the Tamil Forest Act and at Paragraph 7.3 held that, "burden is fastened on the owner to prove that he had no knowledge of using the vehicle for the impugned Forest Act and also to prove that he, his agent if any, person in charge of the vehicle, have taken all reasonable and necessary precautions against such use of the vehicle for committing the alleged forest offence, no such liability is fastened on the owner of the vehicle to discharge his burden under Section 52 of the Indian Forest Act."
In the above judgment, at Paragraph 9, the Division Bench has further held that,
"the owner of the vehicle had not discharged his burden to prove by convincing evidence that not only he had no knowledge nor had not connived with the use of the vehicle for illegal purpose, but his agent or the person in charge of the vehicle had also taken all the reasonable and necessary precautions against such use. The owner has not adduced any evidence to show that the driver of the vehicle took necessary and reasonable precautions to prevent the use of the vehicle for illegally transporting the sandalwood."

20. In S.Gowri v. The Assistant Conservator of Forest Prosecution Squad & another reported in 2004 Writ.L.R., 53, this Court considered the plea of the owner of the vehicle that he had no knowledge and not connived in the commission of offence. In the reported judgment, the vehicle was purchased with help of loan granted by the TIIC. The vehicle was booked by the driver and since the vehicle did not return, the petitioner after ascertaining the address of the person, who had booked the vehicle, lodged a compliant before the Police. Subsequently, she came to learn that the vehicle had been seized by the Forest Department on the allegation that sandalwood was smuggled in the vehicle and when she received the notice under Section 49A of the Tamil Nadu Forest Act, as to why the vehicle should not be confiscated. The owner submitted a reply stating that she was not directly aware of the person who had taken the vehicle on hire and she had no knowledge nor she had connived in the alleged forest offence. It was contention of the owner that the driver was solely responsible for whatever happened. The driver of the vehicle made a statement before the authorised officer to the effect that he got permission from the owner to transport sandalwood. Subsequently, on receipt of the notice regarding the enquiry under Section 49(B) of the Act, the driver made a further statement in writing that the owner of the vehicle did not have any connection in illegal transportation of

sandalwood and that the person who had hired the vehicle did not meet the owner. In other words, on the basis of the retracted statement of the driver, the owner had contended before the appellate authority that he had no knowledge or connived in the commission of offence. The confiscation ordered by the authorised forest officer under the Act was confirmed by the appellate authority.

21. While considering the correctness of the orders, in the above factual background, and following the Division Bench judgment in W.A.No.1296 of 1995, dated 04.12.1995, learned single Judge at Paragraph 9 held as follows:
"In view of the aforesaid analysis of the procedures by the Division Bench, which is binding on me, even accepting in toto the subsequent statement of the driver, the order of confiscation passed by the Authorised Officer and confirmed by the Appellate Authority cannot be said to be illegal. From the subsequent statement of the driver, it is apparent that the driver had knowledge in the commission of the offence and it is further apparent that he had not taken all reasonable steps to prevent the commission of the offence. Therefore, even assuming that the owner was unaware of the commission of the offence and has not connived in the commission of offence, since the driver was aware of such illegal user of the vehicle, the vehicle was liable to be confiscated."

22. The involvement of the vehicle in the forest offence on 21.02.2002, transporting sandalwood is admitted by the respondent. When the forest officials intercepted the vehicle, three persons, viz., Shanmugam, Sivalingam and Jothiraj were present. Among them, Jothyraj was subsequently arrayed as 3rd accused in the Forest case in STOR.No.4 of 2002, under Section 36-A of the Tamil Nadu Forest Act and he had compounded the offence for Rs.15,000/- as per the order of the Forest Officer on 09.03.2002. Shanmugam and Sivalingam were prosecuted before the Criminal Court and pending disposal of the case, the confiscation order was passed, after hearing the objections of the owner, viz., the first respondent herein.

23. It is the case of the first respondent/owner before the Appellate Authourity, viz., learned Principal District and Sessions Judge, Coimbatore, second respondent herein, that he had no knowledge about the involvement of his vehicle in the commission of offence. The learned Judge proceeded on the footing that the burden which is cast on the owner to prove that he had no knowledge of illegal transport of sandalwood was a negative thing and there cannot be any positive and direct evidence to prove that he had no knowledge and if at all, on the basis of circumstances and conduct alone, one has to see whether the owner of the vehicle had taken all reasonable and necessary precautions, against the illegal transport of the sandalwood. The Appellate Authority also considered an hypothetical situation, where the driver had hired the vehicle for taking people from one place to another and during the course of transport, if any illegal activity had taken place, naturally, the Court should presume that the registered owner had no knowledge of the commission of offence. The appellate authority has further observed that if the transportation of the timber is done for the personal benefit of the smuggler with the connivence of the driver, but without the knowledge of the owner, he cannot be penalised and no confiscation can be ordered. It is further observed that the knowledge and connivance of the driver in the commission of offence, is not the criterion for confiscating the vehicle, when it is proved by the owner that he had no knowledge of the offence.

24. In the case on hand, when the vehicle was intercepted by the forest officials, the driver along with others fled away from the scene and when the driver was produced before the Forest Ranger, Amaravathy on the next day, he had confessed that one Sivalingam, an accused in the Forest case engaged the vehicle on hire and he agreed to transport sandalwood, as the driver was promised to give more money. The conduct of the owner in producing the driver of the vehicle may appear to be reasonable, but the admission of the driver is a positive proof that the person in charge of the vehicle had connived with the smuggler, viz., Sivalingam, who had later on compounded the offence

and paid Rs.15,000/- to the Forest Department. The person in-charge of the vehicle has not only failed to take all reasonable and necessary precaution, but he has also committed the Forest offence.

25. As per Section 49A of the Act, where a forest offence is believed to have been committed in respect of any schedule timber, which is the property of the Government, the Officer seizing the property under Sub-Section (1) of Section 41, shall, without any unreasonable delay, produce it together with all tools, vehicles, etc., used in committing such offence, before an officer and where the Authorised Officer siezes any schedule timber, which is the property of the Government and if he is satisfied with the Forest offence has been committed in respect of such property, such authorised officer, may, whether or not a prosecution is instituted for committing such forest offence, can order confiscation of the property so seized together with all tools, ropes, vehicles etc., used in committing such offence.

26. Section 49-B of the Act consists of two parts, viz., (1) the owner of the tool, ropes, chains, boats, vehicles or cattle should prove to the satisfaction of the authorised officer that it was used in carrying timber without his knowledge and connivence of the owner himself, his agent if any and the person incharge of the vehicle and, (2) each of them had taken all reasonable and necessary precautions against such use.

27. The said Section envisages both the criminal prosecution as well as initiation of confiscation proceedings. Prosecution is launched for the purpose of punishing the offenders, whereas, the object of confiscation is to declare that the property, used in the commission of an offence, as the Government property and the two proceedings are entirely different. A Forest Officer can initiate criminal proceedings, if there are sufficient information and evidence available on record. The decision to initiate prosecution is a matter entirely depending upon on evidence. If the facts and evidence unearthed by him, during the course of investigation are not sufficient to bring home the culpability of the owner, then trying the owner before the criminal Court would be futile exercise and harassment. Criminal proceedings is for the offence committed by the driver or owner or any person in charge of the owner, provided there is mens rea. Whereas the object of confiscation is to adjudicate with regard to confiscation of the forest produce and means used in the commission of offence. Confiscation proceedings initiated under the Act is a quasi-judicial proceedings initiated on the basis of the satisfaction of the Authorised Officer. Merely because, the Forest Officer has not included the owner as an accused in the Criminal case, that by itself would not entitle the owner to seek for release of the vehicle.

28. The heavy burden cast on the owner is not restricted or confined only to the limited extent of placing materials that he had no knowledge of the commission of offence or connived with the offender. But he has to prove with tangible and convincing evidence that he has no knowledge that the vehicle was used for illegal purpose, and his agent, or person in charge of the vehicle had taken all reasonable and necessary precautions against such use.

29. As held by the Division Bench of this Court in W.A.No.1296 of 1995, the object of the provision is to ensure that the owner of the vehicle cannot escape by merely pointing out that he had no knowledge or connivance of the commission of the offence. As the owner of the vehicle, it is his responsibility to ensure that not only himself had taken care to see that the vehicle was not used for any unauthorised purpose, the person in charge of the vehicle also did not allow it to be used or connived for such purpose.

30. The approach of the appellate authority in confining himself to the first portion of Section 49B of the Act, i.e., non-impleading of the owner of the vehicle in the Criminal case, is totally misconceived and the appellate authority has failed to consider that prosecution against the owner of the vehicle is

not a pre-requisite for confiscating the vehicle. Such a narrow construction would defeat the laudable object and frustrate the provision of the Act, on the other hand, there can be even simultaneous proceedings one for confiscation of the forest produce, vehicle and materials used in the commission of offence and the other for prosecuting the criminal action against the offenders under the Act.

31. In the instant case, it is an admitted fact that the driver of the vehicle had committed the offence and the owner himself had accepted it. When there is ample evidence to prove that the driver of the vehicle had not taken reasonable and necessary precautions against the use of the vehicle in the offence, provisio of Section 49B(2) of the Act is squarely attracted and confiscation ordered by the Authorised Officer is within the ambit of the provision. Courts/Forest Officials have to exercise their jurisdiction to achieve the object of the Act, and in the words of Supreme Court, liberal approach in the matter would perpetuate the commission of more offences. In the light of the above discussion, the reasons adduced by the appellate authority is not in conformity with the object of the statute and therefore, not tenable. The impugned order is liable to be set aside and accordingly, set aside.

32. In the result, the order of the Authorised Officer is restored and the Writ Petition is allowed. No costs.

12.12.2007
Index: Yes
skm
To
The Principal District and
Sessions Judge, Coimbatore.

S. MANIKUMAR, J.

skm

12.12.2007